IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION No.18497 of 1997
and Writ Petition Nos. 18498, 17197 to 17199 OF 1997,
1002 of 1998 and Rev.Appln.Nos.25 to 27 of 1998
and
W.M.P.NOS.29178, 29180 AND 29784 TO 29786 OF 1998

W.P.NO.18497 OF 1997:

Union of India,
rep. by the Director,
General Services Organisation,
Department of Atomic Energy,
Kalpakkam-102. .. Petitioner

-Vs-

E.Kesavan .. Respondent

!For Petitioner :: Mr. N.Velusamy,SCGSC
in WPNos.18497 & 18498 of 1997
Mr.J.Madanagopal, SCGSC
in WPNos.17197 to 17199 of1997
and Rev.Appl.Nos.25 to 27/1998

^For Respondents :: Mr. N.S.R.Prasad
for M/s.Row & Reddy for R2

Prayer: These Writ Petitions are filed under Article 226 of the Constitution, praying for issuance of Writ of Certiorari for the reliefs as stated therein.

:ORDER

F.M.IBRAHIM KALIFULLA, J.

As the issue involved in all these Writ Petitions as well as in Review Applications is one and the same, they are dealt with in common in this judgment.

2. Before dealing with the core questions involved in these Writ Petitions and Review Applications, we wish to deal with the Review Applications in the first instance to steer clear of any hurdles in dealing with the main issue involved.

3. Writ Petitions in W.P.Nos.17197 to 17199 of 1997 arise out of a common order in O.A.Nos.446, 521 and 551 of 1997 of the Central Administrative Tribunal (in short 'the Tribunal') dated 27-6-1997. By the said order, the Tribunal reached a conclusion that the contesting respondents herein were entitled to remain in service till they attain the age of 60 years as provided under FR 56(b) and accordingly directed the writ petitioners to allow the contesting respondents therein to continue in service till they attain the age of 60 years subject to their fulfilling other requirements. When the petitioners preferred the above said Writ Petitions, in W.M.P.Nos.27231 to 27233 of 1997, initially, while entertaining the Writ Petitions, an order of interim stay came to be granted by this Court on 17-11-1997.
4. After obtaining the order of interim stay, it transpires that the concerned employees, viz., the respondents were relieved from service on the A.N.of 16-12-1997. In the mean time on 25-11-1997, the contesting respondents filed applications in W.M.P.Nos.29601 to 29603 of 1997 for vacating the interim stay granted on 17-11-1997. However, on 26-3-1998, when the Writ Petitions along with the stay petitions came up for orders in the notice of motion list, when on being represented that the contesting respondents had retired from service, by an order of the same date, the Division Bench of this Court was pleased to pass the following order:

"Learned counsel for the appellant states that all the respondents have retired on completion of 60 years, even assuming that they have to retire on completion of 59 years. The fact remains that they have worked and drawn their salary. Now the question has become academic only. In view of this, the question will be determined in appropriate case as and when raised. The question is left open. The Writ Petitions are disposed of in the above terms. No costs. Consequently, W.M.P.Nos.27231 to 27233 of 1997 are dismissed."

5. It is relevant to mention that the respondents were also represented by their counsel, namely, one Thiru M.Gnana Sekaran. However, it will have to be stated that the recording of the fact that the respondents retired on completion of 60 years in the order dated 26-3-1998 did not reflect the correct factual situation. A perusal of the grounds raised in the Review Applications disclose that when the Writ Petitions were called initially, there was no representation on behalf of the respondents and thereafter, after passing over the matter for some time, they were called again at a later point of time, when after hearing the counsel for the respondents-workmen, the above order appeared to have been passed. In such circumstances, there appears to have been a mistake in making a representation in regard to the fact about the age of the respondents which resulted in the passing of the above orders, while as a matter of fact, the controversy involved in the Writ Petitions did survive even as on that date, namely, on 2 6-3-1998 when the above said order came to be passed by the Division Bench. Realising the apparent mistake that had crept in, which led to passing of the above said order, the petitioners

came forward with these review applications within about a month, namely, by 28-4-1998 in which, notice was ordered on 30-4-1998. We are, therefore, convinced that as the question involved in the Writ Petitions did survive for consideration on the date when the orders came to be passed, namely on 26-3-1998, the disposal of the Writ Petitions in such a summary fashion was not warranted and therefore, a detailed consideration is required in order to put a lasting solution to the issue involved. With that view, we feel it appropriate to allow the Review Applications. Accordingly, all the three Review Applications are allowed and the Writ Petitions are restored to file.

6. As far as the Writ Petitions are concerned, all the Writ Petitions are preferred by the Union of India. W.P.Nos.18497 and 18498 of 1 997 concern about two of the employees, employed by Heavy Water Plant. While in W.P.Nos.17197 to 17199 of 1997, the employer is the Department of Atomic Energy. All the respondents (herein after referred to as 'employees') were all employed as 'Drivers'. In W.P.Nos.18497 and 18498 of 1997, the challenge is to the orders of the Central Administrative Tribunal, dated 30-6-1997 and 28-8-1997 in O.A.Nos.702 of 19 95 and 202 of 1997 respectively. In those orders, the Tribunal chose to follow the common order dated 27-6-1997 passed in O.A.Nos.446, 52 1 and 551 of 1997 which is the subject matter of challenge in W.P. Nos.17197 to 17199 of 1997.

7. Before the Tribunal, submissions were made by either parties by relying upon certain Supreme Court Judgments reported in 1991 SCC (L& S) 728 (PRITIPAL SINGH versus UNION OF INDIA); 1993 SCC (L&S) 176 (CHANDIGARH ADMINISTRATION AND ANOTHER versus AJIT SINGH AND ANOTHER; 199 5 SCC (L&S) 522 (STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS). While the former two judgments came to be rendered with reference to FR 56 (b), the latter was in relation to Rule 71(a) of the Orissa Service Code. The Tribunal was of the view that the Judgments which came to be rendered with particular reference to FR 56(b) are to be followed rather than the one rendered in relation to Rule 71(a) of the Orissa Service Code and accordingly held that the 'employees' were entitled for the benefit provided under FR 56(b) and directed the petitioner to retain them in service till they attain the age of 60 years.

8. Before us, Mr.Velusamy, learned Senior counsel appearing for the petitioner contended that the Tribunal committed an error in not applying the ratio of the decision reported in 1995 SCC (L&S) 522 (STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS) which dealt with the issue in question in detail, that though the said decision came to be rendered in relation to Rule 71(a) of the Orrissa Service Code, the said rule was in para materia with FR 56(b) and therefore, the said decision was applicable in all fours to the case on hand. The learned counsel further contended that though in the decisions reported in 1991 SCC (L&S) 728 (PRITIPAL SINGH versus UNION OF INDIA), 1992 SCC (L&S) 990 (CHANDIGARH ADMINISTRATION, through the Chief Engineer & Others -Vs.- MEHAR SINGH AND ANOTHER) and 1993 SCC (L&S) 176 (CHANDIGARH ADMINISTRATION AND ANOTHER versus AJIT SINGH AND ANOTHER), the question centres around FR 56(b), the applicability of the said rule to the concerned category of workmen was not really focused for consideration and therefore, the Tribunal ought to have applied the ratio of the decision reported in 1995

SCC (L&S) 522 (STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS). It was further contended that the subsequent decisions of the Hon'ble Supreme Court reported in 1996(7) SCC 203 (STATE OF ORISSA versus ARNAB KUMAR DUTTA), 1996(II) SCC 240 (ALL ORISSA ELECTRICAL WORKERS UNION versus STATE OF ORISSA) and 199 7 (7) SCC 754 (STATE OF ORISSA AND OTHERS versus SADHU CHARAN PRADHAN) have clarified the legal position more lucidly which would make it clear that the employees were not entitled for the benefit of 60 years as provided under FR 56(b) as they do not satisfy the definition of 'workmen' as provided under the Note to FR 56(b).

9. As against the above said submissions, Mr.N.G.R.Prasad, learned counsel appearing for the 'employees' vehemently contended that Rule 7 1(a) of the Orissa Service Code and FR 56(b) are differently worded and therefore, the decision rendered in regard to Rule 71(a) of the Orissa Service Code cannot be applied to a case where FR 56(b) is relied upon. According to the learned counsel, when the Hon'ble Supreme Court, in the judgements reported in 1991 SCC (L&S) 728 (PRITIPAL SINGH versus UNION OF INDIA), 1992 SCC (L&S) 990 (CHANDIGARH ADMINISTRATION, through the Chief Engineer & Others -Vs.- MEHAR SINGH AND ANOTHER), and 1993 SCC (L&S) 176 (CHANDIGARH ADMINISTRATION AND ANOTHER versus AJIT SINGH AND ANOTHER), and also in the unreported order of the Hon'ble Supreme Court in S.L.P.(Civil) NO.2037 of 1990 dated 24-10-199 9 covers the case arising out of interpretation of FR 56(b), the same was rightly followed by the Tribunal while granting the relief to the employees. The learned counsel also relied upon 2002(1) LLJ 959 (NANI GOPAL DUTTA versus UNION OF INDIA & OTHERS) to contend that what is applicable to FR 56(b) has been succinctly set out in the above said decisions and therefore, the ratio of the judgment rendered in 1995 SCC (L&S) 522 (STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS) can have no application in order to interfere with the order of the Tribunal impugned in these Writ Petitions. The learned counsel, however, fairly admitted that all the employees concerned in these Writ Petitions belong to Class-III service of the Central Civil Services.

10. Having heard the contentions of the respective parties, before rendering our ultimate decision, we feel it appropriate to refer to some of the relevant rules including FR 56 and Rule 71(a) of the Orissa Service Code in order to appreciate the contentions of either parties in the proper perspective.
Rule 2 of the Fundamental Rules states that-
"The Fundamental Rules apply, subject to the provision of Rule 3, to all Government servants paid from the Consolidated Fund of the State and to any other class of Government servants to which Government may by general or special order declare them to be applicable. ..."

Rule 9(17) of the Fundamental Rules defines a Ministerial Servant to mean a Government servant of a Subordinate Service whose duties are entirely clerical and any other class of servant specially defined as such by general or special order of Government."

11. There is no definition of 'Government Servant' in the Fundamental Rules. However, we get the definition of 'Government Servant' and certain other relevant Rules which are applicable to the Government Servants in 'Central Civil Services (Conduct) Rules, 1964' and certain other rules which would be helpful to decide the controversy involved in these Writ Petitions in a more effective manner. We, therefore, feel it appropriate to refer to those rules little more elaborately in our judgment.

"Rule 2(h), 3, 4, 6 and 6(A) of Central Civil Services (Classification, Control and Appeal) Rules 1965 are extracted which read as under:

"Rule 2(h): 'Government Servant' means a person who-

(i) is a member of a service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority;

(ii) is a member of a Service or holds a Civil Post under a State Government and whose services are temporarily placed at the disposal of the Central Government;

(iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government.

"Rule 3. Application:-

(1) These rules, shall apply to every Government Servant including every civilian Government Servant in the Defence Services, but shall not apply to,-

(a) .....

(b) .....

(c) .....

(d) .....

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions."

3(2). Notwithstanding anything contained in sub-rule (1), the President may, by order exclude any class of Government Servants from the operation of all or any of these rules."

"Rule 4. Classification of Services.-

(1) The Civil Services of the Union shall be classified as follows:

(i) Central Civil Services, Group A;

(ii) Central Civil Services, Group B;

(iii)Central Civil Services, Group C;

(iv) Central Civil Services, Group D;

"Rule 6. Classification of Posts.-

Civil posts under the Union other than those ordinarily held by persons to whom these rules do not apply, shall, by a general or special order of the President, be classified as follows:-

(i) Central Civil Posts, Group A;

(ii) Central Civil Posts, Group B;

(iii)Central Civil Posts, Group C;

(iv) Central Civil Posts, Group D."

"Rule 6-A. References to Central Civil Services and Central Civil Posts.-
All references to Central Civil Services/Central Civil Posts, Class I, Class II, Class III and Class IV in all Rules, Orders, Schedules. Notifications, Regulations, Instructions in force, immediately before the commencement of these rules shall be construed as references to Central Civil Services/Central Civil Posts, Group A, Group B, Group C and Group D respectively, and any references to 'Class or Classes' therein in this context shall be construed as reference to 'Group or Groups' as the case may be."
"Rule 2(1)(b) of the Central Civil Services (Conduct) Rules, 1964 reads as under:-
"2. Definitions.- (1) In these rules, unless the context otherwise requires,-
(b) "Government servant" means any person appointed by Government to any civil service or post in connection with the affairs of the union and includes a civilian in a defence service.
Explanation.- A Government servant whose services are placed at the disposal of a company, corporation, organisation or a local authority by the Government shall, for the purposes of these rules, be deemed to be a Government servant serving under the Government not withstanding that his salary is drawn from sources other than the Consolidated Fund of India;
"Rule 2 of the Central Civil Services (Pension) Rules, 1972 reads as under:-
2. Application.-
Save as otherwise provided in these rules, these rules shall apply to Government servants including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to,-
(a) ....
(b) ....
(c) ....
(d) persons entitled to the benefit of a Contributory Provident Fund;"
"Rule 2 of the Central Civil Services (Leave) Rules 1972 reads as under:-
"2. Extent of application.- Save as otherwise provided in these rules, these rules shall apply to Government servants appointed to the civil services and posts in connection with the affairs of the Union, but shall not apply to-
(a) .....
(b) .....
(c) .....
(d) workmen employed in industrial establishments;
(e) .....
(f) .....
(g) .....
(h) .....
(i) .....
(k) .....
Rule 6 of the said Leave Rules provides as to how if a Government servant governed by these rules who is appointed in an industrial

establishment wherein his leave terms are governed by the Factories Act, 1 948.

"Rule 1(3) of the Central Civil Services (Joining Time) Rules, 1979 reads as under:-
"(1) .....
(2) .....
(3) These rules shall apply to all Government servants appointed in Civil Services and posts under the Central Government including work-charged staff but shall not apply to,-
(a) .....
(b) .....
(c) .....
(d) ....."

12. A reading of Rule 2(h) of the Central Civil Services Rules (Classification, Control & Appeal) Rules, 1965 which defines a ' Government Servant' discloses that a Government Servant would include a person who is a member of a service or who holds civil post under the Union and will include any such person whose services are placed at the disposal of any other authority. The term 'authority' has not been independently defined and the

Rules define only an 'appointing authority'. The definition of 'appointing authority' disclose that it means an 'authority' who is empowered to make appointment of a person to a post.

13. As far as Classification of Service or post in Government employment is concerned, the provision has been made only under the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and no such classifications are made in the Fundamental Rules. Therefore, any reference to Classifications of the Civil Services or the Civil posts can only refer to or mean the Classifications provided under Rules 4, 5, 6 and 6A of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. Further, a reading of 2(b) of Central Civil Services (Conduct) Rules, 1964 along with its explanation, as well as, Rule 2(d) and 6 of the Central Civil Services (Leave) Rules and Rule 1 and 3 of Central Civil Services (Joining Time) Rules make it clear that wherever a distinction is to be shown in regard to a ' workman' employed in 'Work charged establishments' or 'industrial establishments' they are distinctively shown or referred to and the same are clearly set out.

14. Thus a reading of the above stated Rules read along with FR 56, with particular reference to its Clause (b) makes it clear that there could be a 'Government Servant' governed by the Rules, namely, the Fundamental Rules, but could still be a category not coming within any of the Classifications as provided under the Classification of Services or posts as provided under Rules 4, 5, 6 and 6A of Central Civil Services (Classification, Control & Appeal) Rules, 1965. In other words, the category of a 'workman' under FR 56(b) is a separate category by itself not coming within any of the four classes, viz., Cl.I, II, III, and IV of the Class of the services or posts as provided in

Civil Services and Civil Posts in respect of a 'Government Servant' who is governed by either Central Civil Services (Classification, Control & Appeal) Rules, 1965 or the Fundamental Rules. When once the said distinction can be clearly understandable and spelt out by virtue of various Rules prescribed under the Central Civil Services Rules, as well as, the Fundamental Rules in particular, FR 56, there can be no difficulty in understanding the applicability of FR 56 as a whole and FR 56(b) to a 'workman' falling under that specific sub rule.

15. With the above stated provisions remain in the manner set out, when the case of the 'employees' of the present Writ Petitions' is considered, it is common ground that all the 'employees' come within the category of Clause-III posts. At the risk of repetition, we wish to refer to the fair statement made by Mr.N.G.R.Prasad, learned counsel appearing for the 'employees' who categorically admitted before us that all the employees were holding Class-III posts in different grades as Drivers. One other relevant factor which is of importance is that while under FR 56(e) which subsequently came to be omitted with effect from 13th May, 1998 i.e. after the impugned order came to be passed by the Tribunal, the said provision provided for the age of retirement of a Class-IV employee in service or post on attaining the age of 60 years, while the proviso to the said FR 56(e) carved out the category of a Class-IV employee of the Secretariat Security Post who initially entered the service on or after 15th September 1969 to retire on attaining the age of 58 years. Therefore, the only question that remains to be considered is as to whether the employees herein could be brought within FR56(b), namely, to the category of 'workman' on the footing that they were employed to perform a highly skilled, skilled or semiskilled and unskilled artisan on a monthly rate of pay in 'industrial' or 'work charged establishment'.

16. There can be no two opinions that a job of a driver can be brought broadly within the mischief of the description of artisan with certain amount of skill as found in the Note to FR 56(b). To put it differently as a driver, the job of the employees herein could be characterised as a highly skilled, skilled or semiskilled of artistic in nature and that they were also drawing a monthly rate of pay.

17. Be that as it may, the uncontroverted fact that still remains is that all the employees concerned were holding Class-III posts in the services of the petitioner. In such a situation, it will have to be held that they do not come under the category of 'workmen' who alone are governed by FR 56(b) to claim that they are liable to be superannuated only on attaining the age of 60 years. On the other hand, the employees having been in the services of the Government is ClassIII service and post they were liable to be retired on reaching the age of 58 years as provided under FR 56(a). In fine, in the classification of service, the employees undoubtedly came under Class-III, and therefore, there was no scope to apply FR 56(e) which was clearly applicable only to Class-IV Government servants. Therefore, the claim of the employees to invoke FR 56(b) and thereby their claim for retention till the age of 60 years as accepted by the Central Administrative Tribunal cannot be countenanced and therefore, the order of the Tribunal is liable to be set aside.

18. The contention of Mr.N.G.R.Prasad, learned counsel for employees by relying upon the decisions reported in 1991 SCC (L&S) 728 (PRITIPAL SINGH versus UNION OF INDIA); 1991 SCC (L&S) 728 (PRITIPAL SINGH versus UNION OF INDIA), 1992 SCC (L&S) 990 (CHANDIGARH ADMINISTRATION, through the Chief Engineer & Others -Vs- MEHAR SINGH & ANOTHER), 199 3 SCC (L&S) 176 (CHANDIGARH ADMINISTRATION AND ANOTHER versus AJIT SINGH AND ANOTHER, are clearly distinguishable. On the other hand, though the decisions rendered in 1995 SCC (L&S) 522(STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS) which was subsequently applied and clarified in 1996 (7) SCC 203 (STATE OF ORISSA & OTHERS versus ARNAB KUMAR DUTTA), 1996(11) SCC 240 (ALL ORISSA ELECTRICAL WORKERS' UNION versus STATE OF ORISSA & OTHERS) and 1997(7) SCC (L&S) 754 (STATE OF ORISSA AND OTHERS versus SADHU CHARAN PRADHAN) though rendered in the context of Rule 71(a) of the Orissa Service Code, the same are apposite in every respect even in relation to FR 56(b) and therefore, the reliance upon the decisions in 1991 SCC (L&S) 728 (PRITIPAL SINGH versus UNION OF INDIA), 1992 SCC (L&S) 990 (CHANDIGARH ADMINISTRATION, through the Chief Engineer & Others -Vs.- MEHAR SINGH AND ANOTHER), and 1993 SCC (L&S) 176 (CHANDIGARH ADMINISTRATION AND ANOTHER versus AJIT SINGH AND ANOTHER), by the Tribunal was erroneous in the facts and circumstances of this case and cannot therefore be approved.

19. In order to understand the scope of coverage of Rule 71(a) and FR 56(b), the same are extracted here under for easy reference.

RULE 71(a) OF ORISSA RULES
(1).

FR 56
(2).

Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a government servant, except a ministerial servant who was in Government Service on 31.3.39 and Class IV government servant, is the date on which he or she attains the age of 58 years subject to the condition that review shall be conducted in respect of the government servant in the 55th year of age in order to determine whether he/she should be allowed to remain in service up to the date of the completion of the age of 58 years or retired on completing the age of 55 years in public interest.

a) Except as otherwise provided in this rule, every Government Servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight (sixty) years: Provided that a government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty eight (sixty) years.

(1).

(2).

Second Proviso:
Provided further that a Workman who is governed by these rules shall ordinarily be retained in service up to the age of 60 years. He may, however be required to retire at any time after attaining the age of 55 years after being given a month's notice or a month's pay in lieu thereof, on the ground of impaired health or of being negligent or inefficient in the discharge of his duties. He also may retire at any time after attaining the age of 55 years, by giving one month's notice in writing.
Note: For this purpose, a workman means a highly skilled, skilled or semiskilled and unskilled artisan employed on a monthly rate of pay in any Government establishment.
Note amended on 13.10.89:
Note: For this purpose, a workman means a highly skilled, skilled or semiskilled and unskilled artisan employed on a monthly rate of pay in any industrial or work-charged establishment.

b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.
Note: In this clause, a workman means a highly skilled, skilled, semiskilled or unskilled artisan employed on a monthly rate of pay in an industrial or work-charged establishment.

c)A Government Servant in Class IV employee service or post shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Class IV employee of the Secretariat Security Force who initially enters service on or after the 15th day of September, 19 69, shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years.

20. For the sake of clarity, we wish to consider the submission on this aspect a little more elaborately. With

that view, when Rule 71(a) of the Orissa Service Code is compared with FR 56(b), it can be clearly seen that both the rules provide a different treatment only to a 'workman' who is governed by the Rules, and in both the Rules, the definition of 'workman' has been set out. In both the rules, the definition is identical in all respects. Any amount of repeated reading of both the rules do not show that any different features are provided in Rule 71(a) than what is provided in FR 56(b) to state that the statement of law based on Rule 71 (a) cannot be applied in respect of the case falling under FR 56(b). We, therefore, hold that what is applicable in respect of a workman as provided under Rule 71(a) of the Orissa Service Code would ' mutatis mutandis' will apply to a case falling under FR 56 (b). When such a conclusion can be safely reached, the only other aspect to be considered is as to the application of the legal position as set out in the various decisions of the Honourable Supreme Court.

21. The question which fell for consideration in the case covered by the decision reported in 1995 SCC (L&S) 522 (STATE OF ORISSA & OTHERS versus ADWAIT CHARAN MOHANTY & OTHERS) has been clearly set out in para 6 which reads as under:

"6. The question, therefore, is whether a Class III government servant, on attaining the superannuation age of 58 years, is required to retire or whether he is entitled to remain in service until he attains superannuation age of 60 years as a workman within the meaning of the Code. ...."

22. In fact, the contention of the concerned persons in that case has been set out in para 7 which is to the following effect.
"7. ... Every workman, highly skilled, skilled, semi-skilled or unskilled working either in Class I, II or III services have been treated as class, as being an artisan and given exception as regards age of their treatment. ...
" .... The word 'workman' in this background should be understood broadly. Any Government employee be highly skilled, skilled, semiskilled or unskilled, should be given the benefit of the superannuation of 60 years envisaged by the exception to the general rule in the second proviso. The industrial establishment must equally be understood broadly and not in a technical sense. ....
23. In para 8, the Hon'ble Supreme Court has concluded as under:
"8. .... It is not in dispute that all the respondents are in Class III service. Perforce, therefore, they shall be required to retire on attaining the age of 58 years.
Again in para 9,
"9. .... It is settled service jurisprudence and all the rules of the Central Government and the State Governments, prescribe the superannuation of a government servant working as Class IV employee as on attaining the age of superannuation of 60 years. Having given the benefit of that class, the workman, be he highly skilled, skilled, semiskilled or unskilled, must be an artisan and is on monthly rate of pay working in industrial or work-charged establishment of the Government. Such government servant also appears to have intended to be given the benefit of superannuation age of 60 years.

24. Ultimately, the law has been clearly set out in para 12 and 13 of the judgment which reads as under:
"12. If the interpretation sought to be put up by the counsel for the respondent are given acceptance, it would render the very object of the rules ridiculous and all classes of government servants would be brought into the vortex of artisan. Class III consists of gazetted as well as non-gazetted employees. The government servants in Class III shall retire on completion 58 years. If the interpretation that every artisan is a workman if he produces an article with dexterity or service with dexterity by manual or technical labour, he would be entitled to remain in service till the completion of 60 years. For example, even a Director of Town Planning or Chief Architect could be considered to be an artisan and, therefore, they too would be workmen entitled to superannuation up to the completion of 60 years of age. Similarly several officers in specified governmental activities would answer the

definition of workman, in particular, the note to the proviso. It does not appear to be the object. As stated earlier, the object appears to be to bring artisan-workman governed by the statutory rules but on a par with Class IV employee and he alone is required to retire on completion of 60 years of age but not the gazetted or non-gazetted Class III government servants or even in Class II or I.

"13. Therefore, we are of the considered view that the government employee in Class III service shall retire on completion of 58 years of age. Even an artisan-workman who was promoted or appointed to Class III service be it gazetted or non-gazetted shall retire on completion of 58 years of age. An artisan-workman who is working in an industrial or work-charged establishment but he is on a par with Class IV employee is to retire on attaining the age of 60 years under the second proviso to Rule 71(a) of the Code. In this view, it is not necessary to decide whether any industrial establishment in a government department, not specified, expressly, is an industry or a factory as contended by the respondents. The Code clearly gives benefit to them. One essential condition to be satisfied is that such an artisanworkman, be it highly skilled, skilled, semi-skilled or unskilled, must, of necessity, be on monthly pay of the Government."

25. In 1996 (7) SCC 203 (STATE OF ORISSA AND OTHERS versus ARNAB KUMAR DUTTA), a contention was raised on behalf of an employee in that case by relying upon a subsequent resolution of the State Government and a prayer was made that the decision reported in 1995 SCC (L&S) 522 (STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS) may not be followed and that a fresh look to the second proviso to Rule 71(a) should be made. However even in this decision, the Hon'ble Supreme Court held that in spite of the subsequent resolution of the State Government dated 21-5-1974, there was no scope to take a different view than what had already been held in the case of 'State of Orissa Vs. Adwait Charan Mohanty' reported in 1995 SCC (L&S) 522. Again, in the judgment reported in 1996(11) SCC 240 (ALL ORISSA ELECTRICAL WORKERS' UNION versus STATE OF ORISSA & OTHERS), based on a reference for reconsideration made to the Bench which decided the case in 1995 SCC (L& S) 522, the Hon'ble Supreme Court in the said decision, viz., in 1996(11) SCC 240 (ALL ORISSA ELECTRICAL WORKERS' UNION versus STATE OF ORISSA & OTHERS) was pleased to held as under in para 2:-

"2. Smt.Idira Jaising has contended that the Government have treated different classes of the persons, namely, electrician, plumber, mistry, fitters Grade II, roller mechanic, mechanic, wireman, etc., ... as skilled workmen entitled to the benefit of 60 years and that the judgment in Mohanty case requires consideration. We do not think that the learned counsel is right in her submission. We have considered the entire service rules operating in the State of Orissa and also various instructions issued by the Government from time to time together with the note to Rule 71(a) of the Rules. We have categorised various persons who are eligible to superannuation at the age of 60 years and such of those employees who have been fitted into Class III and upwards, though they are skilled or highly skilled, they are not entitled to the benefit of 60 years for superannuation. They are required to retire on attaining the age of 58 years while the Class IV employees, though skilled, semi-skilled or highly skilled alone are entitled to the benefit of

superannuation at the age of 60 years. In that view, we are of the considered opinion that the judgment in 'Mohanty case' does not require reconsideration." Still later, after an amendment came to be made to the Note to Rule 71(a), whereby the expression 'any government establishment' was amended as 'any industrial work-charged establishment', the ratio of the judgment in 1995 SCC (L&S) 522 (STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS) was again applied and was held that the statement of law made in the said judgment fully covered the case and the relevant rules on the subject. Thus while the above stated legal position in the case of 'STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS' reported in 1995 SCC (L&S) 522 has been clarified and reiterated in the subsequent decisions of the Hon'ble Supreme Court reported in 1996 (7) SCC 203 (STATE OF ORISSA & OTHERS versus ARNAB KUMAR DUTTA), 1996(11) SCC 240 (ALL ORISSA ELECTRICAL WORKERS' UNION versus STATE OF ORISSA & OTHERS), and 1997 (7) SCC 754 (STATE OF ORISSA AND OTHERS versus SADHU CHARAN PRADHAN), the counsel for the respondent sought reliance upon the Judgments rendered in 1991 SCC (L&S) 728 (PRITIPAL SINGH versus UNION OF INDIA), 1992 SCC (L&S) 990 (CHANDIGARH ADMINISTRATION, through the Chief Engineer & Others -Vs.- MEHAR SINGH AND ANOTHER), and 1993 SCC (L&S) 176 (CHANDIGARH ADMINISTRATION AND ANOTHER versus AJIT SINGH AND ANOTHER), to contend that inasmuch as the later decisions were rendered on FR 56(b) itself as against the former cases where only Rule 71(a) of the Orissa Code came to be interpreted, the later judgments should be followed.

26. It is true that the latter cases arose on FR 56(b) itself while the former came to be rendered based on Rule 71(a) of the Orissa Service Code. However, in none of the later stated decisions, the point of law as regards the applicability of FR 56(b) with particular reference to the 'workman category' and who could be considered as a ' workman' in the light of a person admittedly holding the post of a Class -III service was not considered and in the circumstances, the said decisions can have no application to the facts and circumstances of this case. In 1991 SCC (L&S) 728 (PRITIPAL SINGH versus UNION OF INDIA), it is nowhere stated that the concerned employee was a 'ClassIII employee' and nevertheless he would come under the category of ' workman'. On the other hand, that judgment proceeds on the footing that the concerned employee was a 'workman' and

what was probed into was whether the place of his employment could be characterised as an 'industrial' or work-charged establishment'. Therefore, the said decision cannot be applied to the facts of this case. The same is the position in respect of the other two judgments reported in 1992 SCC (L&S) 990 (CHANDIGARH ADMINISTRATION, through the Chief Engineer & Others -Vs.- MEHAR SINGH AND ANOTHER), and 1993 SCC (L&S) 176 (CHANDIGARH ADMINISTRATION AND ANOTHER versus AJIT SINGH AND ANOTHER). As far as the order dated 24-10-1999 in SLP (Civil) No.20 37 of 1990 is concerned, by the said order, the SLP came to be dismissed in limine at the admission stage, and there is no discussion as to FR 56(b) or the correctness of the order of the Tribunal which was challenged in that SLP. Equally in the judgment reported in 2002(1) LLJ 959 (NANI GOPAL DUTTA versus UNION OF INDIA & OTHERS), no proposition of law has been set out in regard to application of FR 56(b) though that case arose under the said provision. Therefore, no reliance can be placed upon those orders.

27. As stated earlier, the law as stated in 1995 SCC (L&S) 522 (
STATE OF ORISSA versus ADWAIT CHARAN MOHANTY AND OTHERS) has made it clear that the benefit of 60 years provided for a workman cannot be extended to any other

artisan possessing any amount of skill falling within the classified services of I to III and as the employees herein were admittedly Class-III employees, applying the above said legal position to the case on hand, even while applying FR 56(b), it will have to be held that they are not entitled for the said benefit available under FR 56(b) and that they are governed only by FR 56(a) and therefore their retirement at the age of 58 years by the petitioners was perfectly valid and it cannot be found fault with.

28. Having regard to our above said discussion and conclusions, we hold that the employees are not entitled to invoke FR 56(b) to claim the benefit of 60 years for retirement and the contrary declaration made by the Central Administrative Tribunal under the impugned orders is erroneous and accordingly the same are hereby set aside.

29. We, however, make it clear that by virtue of the order of the Tribunal, if any employee had continued beyond 58 years and paid salary for the period of such employment, the same shall not be recovered on the principles that they had worked and earned their wages for that extended period of employment.

In the result, all the Writ Petitions as well as the Review Applications are allowed. The order of the Central Administrative Tribunal dated 27-6-1997 in O.a.Nos.446, 521 and 551 of 1997 and the orders dated 30-6-1997 and 28-8-1997 in O.A.Nos.702 of 1995 and 202 of 1997 respectively are hereby set aside. However, in the circumstances of the case, we make no order as to costs. Consequently, all connected Miscellaneous Petitions are closed.

Index: Yes
Internet: Yes
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To

1. The Central Administrative Tribunal,
Madras Bench at Madras.

2. The Director,
Union of India,
General Services Organisation,
Department of Atomic Energy,
Kalpakkam-102.